



UNIVERSITY OF VIRGINIA LAW SCHOOL ADDRESS

GOVERNOR JANET NAPOLITANO
REMARKS, AS PREPARED

MARCH 14, 2003
BOARD'S HEAD INN, CHARLOTTESVILLE, VIRGINIA



It is great to be back at my law alma mater, and see familiar faces. It's the second time in three months that I have been able to reconnect with UVA. When I was inaugurated as Governor of Arizona in January, I staged a mini-reunion in Phoenix with many of my law school classmates to celebrate the occasion.

Inauguration Day – January 6 – marked a big turning point in my life. I left the world in which law is practiced, and entered the world in which law is formulated and administered. For the first time since graduating from law school, I am not serving as a lawyer in any capacity.

In fact, I have even put my bar membership on inactive status, as it will remain for as long as I am Governor. In fairness, I was motivated to suspend my membership mainly so I could avoid CLEs and membership dues, but nonetheless...

When I became Governor, I completed a transition into public service that I had been preparing for throughout much of my life. The burn to serve the public began for me. Many adults saw it coming when I was elected New Mexico's lieutenant governor in Girl's State.

Later I was a member of the first class of Truman Scholars. For the uninitiated, the Truman Foundation awards these scholarships to outstanding students, with a caveat: in exchange, we must commit ourselves to careers in public service.

After college and law school, I tried to establish a balance in my experience. My positions included a clerkship for U.S. Appellate Court Judge Mary Schroeder, followed by serving as a staff attorney for the U.S. Senate Budget Committee, which led to a position with the Phoenix law firm Lewis & Roca.

It was during my time at Lewis & Roca that I came to fully appreciate the need to strike a healthy balance between public service and private pursuits. My mentor there was John P. Frank, a towering figure in law who spent his career in perpetual pursuit of social justice.

He is perhaps best known as the attorney for Ernesto Miranda, whose illegal arrest by Phoenix police in 1962 led the U.S. Supreme Court to establish the mandatory recitation of Miranda Rights to anyone arrested by law enforcement.

John Frank devoted his career following the example of Justice Louis Brandeis, who believed that lawyers have "the obligation to use their powers for the protection of people."

To Justice Brandeis, not to mention John Frank, the concerns of private clients were of practical importance.



But they lived by a larger truth – that how they treated the individual clients would shape how well the larger public good was being served.

This nexus between public service and private ambitions is something that great lawyers and jurists understand. I regret that fewer and fewer of us in the legal profession share their enlightenment, and we do so at the expense of our profession.

Justice Brandeis had it right. Whether he carefully planned to inject himself into both public and private pursuits – or whether he just couldn't help himself – he personifies the high ideal to which each of us should aspire.

Brandeis was, of course, one of the 20th Century's most important jurists as a U.S. Supreme Court Justice. At his essence, however, he was the "people's attorney" from Kentucky, who never let his lucrative career as a Harvard-educated Boston attorney get in the way of his crusade for equal justice.

His 37-year law practice in Boston made him a wealthy man. When he died in 1941, his estate was worth \$3 million. This is all the more impressive considering that he gave more than \$1.5 million to social causes throughout his life.

But his public service also gave him that other kind of wealth that each of us seeks in our pro bono work and the other pursuits that nourish our souls, if not our pocketbooks.

His successful law practice served as the means to a larger end of public advocacy. It enabled him to pursue justice where his passions sufficiently enflamed him to do so.

In 1893 he vigorously opposed a plan to extend Boston streetcar tracks across the Boston Common. To do so, Brandeis argued, would "sacrifice the interests of the public to that of a single corporation."

Of course, he was right. Imagine if you will the Boston Common today, cut in half by trolley tracks. It remains whole thanks to a host of public advocates, not the least of whom was one Louis Brandeis, a private lawyer with a public conscience.

Any one of us might look to the preservation of such hallowed ground as the Boston Common as the crown jewel of our career. For Brandeis, though, this was just the beginning.

He fought for working people by supporting the union movement. He fought for women's rights, especially suffrage. Himself a Jew, he fought anti-Semitism.

But Brandeis's most lasting contributions as a lawyer came in slaying giants. His lengthy struggles against exploitive New Haven Railway resulted in the Interstate Commerce Commission introducing price controls and competition throughout New England. This, of course, made regional rail travel affordable to more than the wealthy elite.



Perhaps his greatest feat as a lawyer was his intervention in a struggle between U.S. Interior Secretary Richard Ballinger and the federal government's Chief Forester, Gifford Pinchot over proper stewardship of our wooded lands. His intervention helped to defeat President Taft for reelection in 1912 and further galvanize America's conservation movement.

Certainly, his most lasting contribution to the practice of law was the invention of what we know today as the Brandeis Brief, which relies on evidence other than jurisprudential record and precedent to prove a case. He first employed this strategy in 1908, with the *Muller v. Oregon* case, in which an employer challenged an Oregon law limiting to 10 hours the amount of time an employer could require a female employee to work each day. The employer argued that placing this limit on his infringed on his 14th Amendment right to "life, liberty and the pursuit of happiness."

Brandeis, his view of the world rooted in the impact of the law on ordinary people, attacked *Muller's* case by amassing more than 100 pages of sociological and economic data that demonstrated the negative impact of excessive labor on women.

No one had every taken this egalitarian approach to such a case before, but it worked. He went on to use this tactic to strengthen child labor laws, and the rest of the legal community went on to adopt his briefing style, dubbed the Brandeis Brief, and forever change the practice of law.

All of these accomplishments came accrued to his benefit when President Wilson named him to the United States Supreme Court. So deep went his roots of private practice and public advocacy that he made enough enemies in the United States Senate to throw his confirmation in doubt. Although he was ultimately confirmed, his confirmation battle remains the most protracted in Supreme Court history.

Once on the bench, Justice Brandeis spent 33 years as a passionate public servant, drawing from his deep trough of experience in public service and private practice. He understood those two worlds as well as any lawyer of his time, and he used his understanding to reshape how the Court approaches many of the cases it settles.

He earned this venerable legacy because he kept one foot firmly planted in public service, with the other in his law career. He understood both worlds and how they play off of one another. For his own part, his well-rounded legal pursuits made him a much more versatile lawyer and a better human being.

As I think about the modern practice of law, I wonder if we can't do a better job of emulating his example.

More and more, attorneys approach their calling as a job and not a passion – a vocation, not a way of life. Partnership in a law firm becomes the end goal, not the springboard for greater pursuits humanity's behalf.



Pro bono work is regarded more like an obligation than an opportunity, and community service is accomplished more through checkbook philanthropy than by sweat equity and the passionate application of the law.

This trend has produced two unfortunate byproducts:

- First, it begins to diminish the grandeur of the legal system, not to mention its central importance in the lives of ordinary citizens. The less passion lawyers can apply to their job, the less passionate they can feel about their clients, not to mention their decision to become lawyers.

When I read about Brandeis's exploits, I can't help but conclude that he loved his work, and he was simply having a lot of fun – the time of his life. When he received his Harvard law degree, he understood that it would do far more than help him to get a job – it would help him to do good for society.

So, as more attorneys pursue narrow career paths that do not include public/private cross-pollination the legal world for them loses its luster. It's not an adventure – it's just a job.

This hurts the legal profession, and by extension, society as a whole.

- The second unfortunate byproduct is the lack of understanding that grows between the legal community and the public it represents.

Lawyers who reach beyond the narrow confines of their law practice to understand the world around them naturally widen their horizons. They better understand the workings of the world they're seeking to help.

As the legal community continues to further cloister itself behind its walnut paneled walls and attend to its clients without engaging in the outside world, the legal community loses its footing in that outside world, to everyone's detriment.

I have seen this growing artificial divide between the public welfare and the private ambitions of the legal community. I saw it as a private attorney, as US Attorney for the District of Arizona, and I saw it as Arizona's Attorney General.

Believe me, this trend has no up side, and I implore you to join me as foot soldiers to re-install a sense of public commitment among our fellow lawyers.

I have worked to reflect this philosophy in my public pursuits, and instill this spirit in those who work for me. We did some important work in the Arizona Attorney General's Office in the area of consumer advocacy that I think reflects moments when we got it right.



When we won a judgment, I wanted to ensure that we went beyond treating the symptom of a social problem. I wanted the award we won to be applied toward curing the illness.

So, when women were being exploited commercially through a price-fixing scam with a women's clothing store doing business in Arizona, we donated the money the judge awarded the state to battered women's shelters.

When we won a landmark lawsuit against a vitamin manufacturer for similar illegal pricing activities that primarily exploited senior citizens, we used the settlement money allotted to Arizona to provide free dentures for Arizona's rural senior citizens who had no financial resources to purchase their own false teeth.

We were the first state to take legal action against Arthur Andersen, for an accounting scandal that robbed 13,000 senior citizens of more than half a billion dollars in retirement funds. In subsequent court proceedings, when I learned that we had successfully recovered nearly 75 percent of the lost pension funds for the investors in the now-defunct Baptist Foundation of Arizona, I knew we had served a higher purpose the executing the law as stated.

We had truly helped people get their lives back together, and the feeling transcended the forensic satisfaction of a case well-argued.

This is the spirit that I try to impart on up-and-coming lawyers. In 1999 I was asked to be the commencement speaker for the Arizona State University College of Law. As I contemplated what wisdom to impart, I spent time thinking about what gave me the most satisfaction about having a law degree.

Was it that I got to argue interesting cases as a private attorney? A little.

Was it that I got to help administer justice on a large scale as a state and federal prosecutor? Yes, that's part of it.

But more than anything, it was that I had earned possession of this tool that would empower me to help others in my community. As much as I have enjoyed the pro bono cases I have taken, I have valued even more the idea that I can take them on.

I encourage young lawyers to start small and think big.

- Work with a neighborhood association.
- Serve on the board of a youth center.
- Participate in a bar committee.
- Provide legal service to the poor.



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By all means, we lawyers must engage fully in our communities, and use our training to the maximum benefit of our careers and our communities. That exercise gives us the best understanding of the world around us. How large or small that world is will determine how big of an impact we have in this life.

The 19th Century English essayist William Hazlitt put it best:

“All that men really understand, is confined to ... their daily affairs and experience; to what they have an opportunity to know, and motives to study or practice. The rest is affectation and imposture.”

Let us maximize our understanding of the world we are trained to help, and minimize our reliance on affection and imposture.

Thank you.